Office of Chief Counsel Internal Revenue Service

memorandum

CC: NER: MAN: TL-N-4756-00

VATaverna

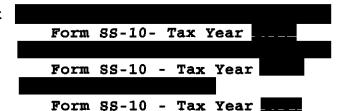
date:

to: Chief, Examination Division, Manhattan District

Attn: Revenue Agent Robert Fieldsteel

from: District Counsel, Manhattan

subject:



Consent to Extend the Statute of Limitations on Assessment

STATUTE OF LIMITATIONS EXPIRES

UIL Nos. 6501.08-00, 6501.08-09, 6501.08-17

DISCLOSURE STATEMENT

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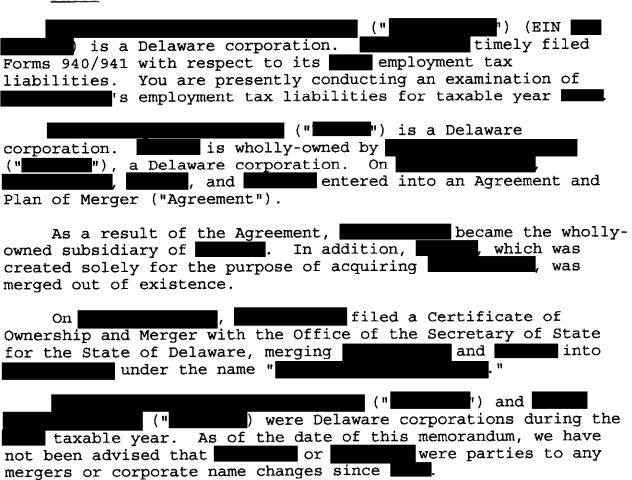
We write in response to your request for advice in the above-captioned matters. Specifically you have requested that we provide you with the appropriate language to use on Forms SS-10 (Consents to Extend the Time to Assess Employment Taxes) to extend the statute of limitations on assessment of the employment taxes of 1.

for the taxable year . The statute of limitations on assessment currently expires on

<u>Issues</u>

- 1. Which entity is the proper entity to enter into a consent to extend the statute of limitations on assessment of the taxpayer's employment tax liabilities (Form SS-10) for pre-merger tax years?
- 2. What specific language should be used on the Forms SS-

Facts



Discussion

1. Which entity is the proper entity to enter into a consent to extend the statute of limitations on assessment of the taxpayer's employment tax liabilities (Form SS-10) for pre-merger tax years?

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provided an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

Unlike the income tax liability of a consolidated group, where, as a general rule, the common parent acts as sole agent for each member of the group, each member of a consolidated group must act on its own behalf with respect its own employment tax liabilities. See I.R.C. § 1501 and the regulations thereunder. Each member is, therefore, responsible for entering into its own consent to extend the statute of limitations with respect to its employment tax liabilities. In the case of merged corporations the surviving or resulting corporation in a merger under state law may validly sign an extension agreement on behalf of the transferor (predecessor) corporation for a period before the transfer. Rev. Rul. 59-399, 1959-2 C.B. 499; See also Popular Library Inc. v. Commissioner, 39 T.C. 1092 (1963); Union Bleachery v. Commissioner, 97 F.2d 226 (4th Cir. 1938).

Here, the Agreement provides that survived the merger between and the survived the merger between and the survived the sur

Since and and have not been subject to mergers or corporate name changes, they are the proper parties to execute the Forms SS-10 relating to their respective employment tax liabilities.

The Forms SS-10 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of and and respectively.

See Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

2. What specific language should be used on the Forms SS-10?

The caption of the Form SS-10 extending the statute of limitations for the statute of the limitations for the statute of the s

taxable year should read as follows:	
" (EIN	(formerly)"
The EIN of Ein (EIN Ein Should be entered in the upper right hand corner of the Form SS-10.	
The Forms SS-10 for special language.	and do not require
Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.	
Should you have any questions regarding this matter, please contact Viviana Taverna of this office at (212) 264-1595, ext. 211.	
	LINDA R. DETTERY District Counsel
By:	PETER J. LABELLE Assistant District Counsel
Noted:	

LINDA R. DETTERY District Counsel

cc: Theodore R. Leighton (by e-mail)
Assistant District Counsel

Peter J. Graziano (by e-mail) Executive Assistant to Regional Counsel